



FINAL MEETING SUMMARY

DEVELOPMENT CODE REVIEW COMMITTEE

Tuesday, September 30, 2014

2:00 PM – 4:00 PM

Meeting hosted by: Don Elliott, Clarion Associates
Kristin Cisowski, Clarion Associates

Development Review Committee Members Present

- Don Callahan
- Laura Smith
- Suzannah Ballard

Development Review Committee Members Absent

- Mychal Gorden
- Jerry Johnson

Staff Present

- Stuart Schmeling, Senior Planner
- Diane Libby, Management Specialist

Mr. Elliott greeted and thanked the committee for attending the Skype conference call on September 24, 2014. There were three significant proposed changes that were pointed out last week to include in today's discussion:

1. Administration: sorting out the ZA (Zoning Administrator) and Director duties
2. Notice: current process includes mailing, posting, and publishing. Arizona state law only requires published, or posting if there is not a newspaper in circulation

3. Enforcement: revised, amended, and added to the way the code is enforced, adding a ticketing option

Module 1 Draft Pages 5-9 & 5-10 Section 14.5.02 Decision Makers & Procedures Summary Table

Mr. Elliott provided a description of the proposed changes in this section. He focused on Table 5-1. His summarized statement includes the following key points:

- Zoning ordinance day to day routine administration belongs to the ZA
- Appeals of the ZA's decisions go to the BOA (Board of Adjustment)
- Items that require judgment (more than does this comply with the zoning ordinance; things that require more than a yes or no decision) belong to the Director
- Appeals of the Director's decisions go to the PC (Planning Commission)

Committee's summarized comments/concerns (not limited to):

- Too many duties assigned to the ZA
- Negative reaction to ZA decision appeals going to the BOA (BOA is restricted to discussions with the ZA only; the person who made the original decision)
- If appeals went to the PC, the PC can communicate with other commission members and City Council to discuss their interpretation of the code
- Would prefer Chairman of the PC be allowed on the BOA
- Current code states the Director is responsible for the BOA, but our current process is that the ZA presents to the BOA
- Concerns regarding Site/Design Review approval/appeal process including discussion on defining what is Site vs. Design Review, PD's, and overlay districts

Additional discussion results in the following suggested proposed changes to the draft by Mr. Elliott:

- In the event of a ZA decision appeal, the Director will present to the BOA
- The Chairman of the PC sits as an ex-officio member on the BOA
- Site/Design Review to stay as proposed for now, going to the ZA, appeals going to BOA, but leave the door open so that if we come up with something that the appeal really needs to go to the PC or it needs to be done by the Director then we are willing to add that in

Module 1 Draft Page 5-15 & 5-16 H Notice of Hearing

Mr. Elliott's focus question for the Committee for this section is, "do we want notice that is not required by Arizona law to appear in the code?" Mr. Elliott's statement includes the following key points:

- It is the City's commitment to continue to give the same amount of notice you do now
- The City Attorney's general advice throughout the code rewrite is to bring us in compliance with Arizona law; take things out that we could get sued for that are not required
- If you add more to the code than is required by Arizona law, doing so could lead to additional legal challenges if a decision were to be challenged in court
- If you end up in court, the first thing attorneys will look for is, not was it a bad decision, but did they cross all the T's and dot all the I's, basic failure to take a right step
- Valid concern example; posting (if not required by Arizona law) incorrectly should not lead to a procedural lawsuit
- Arizona law is clear that you can always do more if you choose

Committee's summarized comments/concerns (not limited to):

- Not comfortable with only meeting the minimum requirement of newspaper publishing and not posting, not everyone has access to the online or hard copy newspaper
- History has proven more residents get involved in the process when they see the property posting signs
- Mailing notice has both pros/cons in that it has the potential to reach more residents but it is costly and cumbersome

Additional discussion results in the following points and suggested proposed changes to the draft by Mr. Elliott:

- It is normal to put in the code the type of notice your citizens and elected officials want you to give regardless of whether it is required by state law
- Least effective type of notice is published notice
- Most effective type of notice is posted notice
- Consider an option to give notice via free email mailing list or other electronic option; mailing notice will change drastically in next 10 years due to technology changes
- Leave published and posted notice in the code. Remove verbiage that states "posted notice if no newspaper is in circulation"
- Remove mailing notice from code

Module 1 Draft Page 5-62 thru 5-70 Violations, Enforcement, and Penalties

Mr. Elliott asked Mr. Schmeling to describe the current process used regarding enforcement for violations. Mr. Schmeling provided the following details:

- Staff contacts property owner via phone and tries to gain compliance informally
- If nothing happens, we send out a 30 day violation letter and try to keep the communication open
- Hopefully, owner complies in 30 days
- If not, then staff has the ability to turn it over to the Prosecutor's office and let them go to court

Mr. Elliott and the Committee discussed in depth, the issues and concerns that surround the violation and enforcement functions of the code. Discussion also included a new proposed element of enforcement ticketing, including going to court or paying a fine and not going to court. Key points of concerns/comments are as follows:

- Concern that allowing payment of a fine via ticket system does not ensure compliance
- There is need for a property maintenance program whereby the City could clean up a property and access a lien against that property
- Regarding health & safety violations currently, if we receive securing compliance, it is usually in the form of 4 X 8 plywood and some padlocks; eyesore
- Currently, Council needs to direct staff to spend money on private property
- Define the criteria for what is "junk" (yard art vs. yard junk or garbage)
- Allow the ZA to interpret the criteria, if you don't like that decision, it goes to appeal
- Mr. Elliott stated that typically, City Council does not get involved in enforcement decisions
- Increase the amount of authority Code Enforcement or the ZA have for this action
- Caution against too much regulation, similar to a condo type municipality restriction, no parking in yard etc.

- Stay aware to the fact that many residents moved here in order to have their vehicles and toys parked at their residence

Following this detailed discussion, the follow-up points and suggested proposed changes to the draft were made by Mr. Elliott:

- Clarion to check with City Attorney to confirm if the State of Arizona permits you to lien property
- Propose criteria for the ability to abate the nuisance and lien subject to pretty strict criteria
- Begin process with informal conversation
- Provide 21 day compliance notice
- Imposition of a fine
- Non-payment of a fine after a pre-determined amount of time

Ms. Smith raised concerns regarding the Planned Development (PD) process changes. She inquired if it was being removed.

Mr. Elliott clarified that it is not being eliminated, but that it will be reduced and simplified. He stated you want to try to create zone districts so they can be governed by objective standards and fewer of them have to be negotiated.

Detailed discussion regarding this subject included some of the following key points:

- Current process produces a site specific zoning district in and of themselves because they are married to a site plan with building elevations, parking spaces, etc.
- After 3 years if the project isn't developed, applicant can request an extension from Council
- If Council disapproves the extension, their next action is to rezone it back to the original zoning district
- Problems arise when we pass the 3 year mark and no notice or action has been taken
- Would like to see the process brought back automatically after 3 years has lapsed
- Consideration for Proposition 207 with regard to granted exceptions

Mr. Elliott stated that this will be discussed in more detail in the next module, but every city faces this problem. Every PD is a zoning action. You zoned it into a PD and what if the guy doesn't build it?

There are solutions to it. Mr. Elliott's suggestions included:

- You provide a notice that your zoning and plan is going to expire
- The zoning district is still there and it is still called PD, but it replaced by the underlying district without the special conditions. It can't be empty
- City Council does not take action to rezone
- Applicant can come forward to Council again for reconsideration with a new plan
- Draft section so that the PD is not entitled to the rights; rights were contingent on compliance with what was presented to City Council

Mr. Elliott then stated that they will modify this section to provide:

- Clarify notice
- Zoning doesn't go away and it not just an option for Council to rezone
- The plans content goes away and the underlying zoning district is in effect

Module 1 Draft Page 5-6 Re: Reasonable Accommodation

Ms. Smith began a discussion regarding reasonable accommodation. Several comments and concerns Ms. Smith had are summarized to include:

- Suggested process on limited stuff like the example you gave at the meeting 9/24 of the handicap ramp in the setback, is fine
- Bigger issues (sober home) resulted in an Ordinance approved by City Council
- Ordinance is to hire a Hearing Officer; will we use that moving forward?
- Not certain BOA is correct place for items that may be at the point of already securing legal counsel

Mr. Elliott asked if there is an approved ordinance for a reasonable accommodation. If so, he would like a copy of the language as he was not aware of it.

Mr. Callahan stated he did not believe an ordinance was approved by City Council

Mr. Elliott responded, as you recall from our conversation with Kelly the other day, she wants appeals of condition of actions, done by an outside Hearing Officer. When we drafted this, that wasn't really on the table. Kelly asked us to get rid of the language that Planning Commission acts as the Hearing Officer.

Module 1 Draft Page 5-19 B & C Time Limits

Ms. Smith began discussion on this section as there is much improvement that can be made. Her comments included the following key points:

- Currently there is no clear definition of "substantial construction"
- Not in favor of ability to extend time of building permit
- Does not like the phased development approach to building

Mr. Elliott responded that the description of substantial construction is easy to fix. You could add "completed to the point of at least completing foundation".

Additional discussion regarding the pros and cons including phased development and the failure to complete the additional phases was continued.

Module 1 Draft Page 5-36 Temporary Use Permits

Ms. Ballard asked for clarification regarding the TUP (Temporary Use Permit) because she is concerned many occupy premises for more than 3 consecutive days.

Mr. Schmeling clarified the 3 types of Temporary Use Permits:

- Typical 1 day events, such as a carwash
- A 3 day event for the fee of \$75.00, long weekend events are common
- A 30 day TUP for the fee of \$485.00, Christmas tree sales, etc.

Mr. Elliott stated that our intention is to carry forward this system of short, long, and exempt ones and present the use table next time.

Mr. Callahan asked Mr. Schmeling if we are doing anything with Parks & Recreation in the park right now.

Mr. Schmeling responded no, we aren't addressing commercial activity in this at all.

Mr. Elliott added that is just a permitting process. Most cities' administration prefer to have that be a part of park administration and sort it out based on the fact that it is publically owned land and we have a department that manages that land and they are accountable to the elected officials. If you put it in zoning it gets awkward.

Module 1 Draft Page 5-51 Rezoning to PD Overlay

Ms. Smith began this conversation by stating that she always looked at an overlay by the definition of the state statute as something that due to the significance of the geographical area you need special restrictions because of the area.

Discussion continued regarding the pros and cons of the draft language. Mr. Elliott summarized that you want to know how the ones you have today will be treated. Next time we meet, we have to determine how many of the approved PD's stay in that form. Once this section it is sorted out, I think you want a PD tool that has criteria in it so that Council approves them when there is a benefit to the City. That is one issue. This is a process for approving overlays in the future.

Ms. Smith stated she found issues with the definitions section, and Mr. Elliott asked her to email those to Stuart so he can forward them to Clarion.

Ms. Smith also had concerns regarding the mixed use zoning districts.

Mr. Elliott stated that the next time they come; they will lay out how they think the zone districts can be sorted out and put on a table. This discussion will be in the next meeting.

Mr. Elliott wrapped up the meeting at 4:00p.m., stating this has been helpful for us. Thank you for meeting with us. If you have additional comments please send them to Stuart and he will forward to us. We are always happy to take your comments. If the public gets comments to Stuart as well, he will forward to your group.